WILLS—PARTIAL REVOCATION.—In Hartz v. Sobel,[1] the testatrix had inserted in her will, bequests of $5000 to each of two nephews, who were likewise appointed executors. Subsequently, she took a sharp instrument, cut the name of one of the nephews out of the bequest and the clause appointing executors, and changed the plural of the words "nephews," "executors" and "children," to the singular. The will was not re-executed. Upon the death of the testatrix, the will, in its mutilated condition, was found, together with a duplicate copy of the original instrument. In deciding the case, under the statute,[2] Lumpkin, J., after an historical consideration of the subject and an elaborate review of the authorities, held that the revocation was not accomplished by any of the statutory methods, and was, therefore, ineffective; and the duplicate copy was admitted in evidence to prove the original bequests and appointments.

The law in regard to the revocation of wills is by no means uniform. Under the Statute of Frauds,[3] it was well recognized that a partial revocation was permissible and the obliteration or excision of words or clauses, unless of a material part of the will, was regarded as a revocation *pro tanto* only.[4] In those States of the United States where the Statute of Frauds is in force, a similar interpretation is given to it.[5]

By the provisions of the Statute 1 Vict. c. 26,[6] this doctrine has been abolished in England. The law in England now seems to be that a partial revocation is of non-effect and where the original testamentary disposition is discernible on the face of the instrument, the will will be probated as originally executed.[7] Parol evidence,

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[1] 71 S. E. Rep. 995 (Ga. 1911).

[2] Code of 1863, sec. 2441: "An express revocation may be effected by any destruction or obliteration of the original will or a duplicate, done by the testator or by his directions with an intention to revoke; such intention will be presumed from the obliteration or canceling of a material portion of the will; but if the part canceled be immaterial, such as the seal, no such presumption arises."

[3] 29 Car. II: "No device in writing of any lands, tenements or hereditaments, *nor any clause thereof,* shall be revocable otherwise than by burning, canceling, tearing or obliterating."

[4] Burkitt v. Burkitt, 2 Vern. 498 (1705); Sutton v. Sutton, Cowp. 812 (1778); Larkins v. Larkins, 3 Bos. and Pul. 16 (1802); Mence v. Mence, 18 Ves. 348 (1811); Roberts v. Round, Hagg. Eccl. 548 (1830); Francis v. Grover, 5 Hare, 39 (1845).

[5] Wheeler v. Bent, 24 Mass. 61 (1828); In the Will of Kirkpatrick, 22 N. J. Eq. 463 (1871); Cogbill v. Cogbill, 2 H. and M. (Va.) 467 (1808); Stover v. Kendall, 1 Cold. (Tenn.) 557 (1860); Wells v. Wells, 4 B. Mon. (Ky.) 152 (1826).

[6] "No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore prescribed," etc.

[7] In the Goods of Stone, 1 Sw. and Tr. 238 (1858); In the Goods of Parr, L. J. 29 P. and D. 70 (1859); In the Goods of Leach, 23 L. T. 111 (1890).

however, is inadmissible to establish the contents of the original document,[8] unless the doctrine of dependent relative revocation is applied.[9]

The law in the various United States jurisdictions adopts one or the other of the above viewpoints, depending upon whether or not the re-enactment of the Statute of Frauds in the particular jurisdiction contains the words "or any part." The majority of jurisdictions seem to have omitted these words; and the law, as presented in the leading case, represents the weight of authority,[10] although some courts base their decisions on the principle of dependent relative revocation.[11]

C. A. S.

[8] Townley v. Watson, 3 Curt. 761 (1844).

[9] In the Goods of McCabe, L. R. 3 P. and D. 94 (1873).

[10] Simrell's Est., 154 Pa. 604 (1893); Wolf v. Bollinger, 62 Ill. 368 (1872); Giffin v. Brooks, 48 Ohio St. 211 (1891); Clark v. Smith, 34 Barb. 140 (1861); Gay v. Gay, 60 Ia. 415 (1882).

[11] Gardner v. Gardiner, 65 N. H. 230 (1889); Doane v. Hadlock, 42 Me. 72 (1856).